

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

MICHAEL J. WAUGH,)
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 Plaintiff,)
)
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 vs.) No. CIV-11-1419-C
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STATE OF OKLAHOMA, et al.,)
)
)
 Defendants.)

ORDER AFFIRMING REPORT AND RECOMMENDATION

This civil rights action brought by a prisoner, proceeding pro se, was referred to United States Magistrate Judge Shon T. Erwin, consistent with the provisions of 28 U.S.C. § 636(b)(1)(B). Judge Erwin entered a Report and Recommendation on January 31, 2013, recommending that summary judgment enter in favor of Defendant Phillips. Plaintiff has timely objected. The Court therefore considers the matter de novo.

Plaintiff objects to the Report and Recommendation on the sole basis that summary judgment should not be entered without an opportunity for him to conduct discovery and flesh out his claims. However, he failed to raise this argument in his briefing before Judge Erwin; further, he failed to file the affidavit required by Fed. R. Civ. P. 56(d). Moreover, there are no facts, even given his version of what happened, which would support a cause of action against Defendant Phillips, who is the only Defendant whose motion is under consideration at this time. Other than the insistence that he is entitled to conduct discovery,

Plaintiff does not dispute either the facts or the law set out in the Report and Recommendation of the Magistrate Judge, and the Court finds the conclusion reached therein to be the correct one.

Accordingly, the Court adopts, in its entirety, the Report and Recommendation of the Magistrate Judge, and for the reasons announced therein, Defendant Deputy Charles A. Phillips' Motion for Summary Judgment (Dkt. No. 26) is granted. A judgment will enter at the conclusion of the case.

IT IS SO ORDERED this 27th day of February, 2013.



ROBIN J. CAUTHRON
United States District Judge